

STATE OF NORTH DAKOTA
NORTH DAKOTA DEPARTMENT OF HEALTH

<u>IN THE MATTER OF:</u>)	
)	
Continental Resources, Inc.)	ADMINISTRATIVE COMPLAINT
PO Box 1032)	
302 North Independence Street)	
<u>Enid, OK 73702</u>)	Case No. 09-002 WPC

IMPORTANT NOTICE

If Continental Resources, Inc., (CRI) does not serve upon the undersigned an answer to this Administrative Complaint within twenty (20) days after service of this Administrative Complaint, the North Dakota Department of Health (Department) will deem allegations in the Complaint admitted by CRI and will enter an Order in Default against CRI as the facts and law may warrant. If CRI does serve upon the undersigned an Answer to this Complaint within 20 days after service, a hearing on this matter will be scheduled.

The Department, for its Complaint against CRI states and alleges:

I. JURISDICTION AND AUTHORITY

1. This Complaint is instituted under N.D.C.C. ch. 61-28, Control, Prevention, and Abatement of Pollution of Surface Water, and N.D. Admin. Code art. 33-16, Control, Prevention, and Abatement of Pollution of Surface Water, and in procedural compliance with N.D.C.C. ch. 28-32, Administrative Agencies Practice Act.
2. The Department has authority to bring this action under N.D.C.C. §§ 61-28-04, -07, and -08.
3. CRI is an oil and gas exploration and production company authorized to do business in North Dakota. Its principal office is located at 302 North Independence Street,

Enid, OK 73701.

4. CRI is a corporation and is therefore a "person" within the meaning of N.D.C.C. § 61-28-02(5).
5. CRI is subject to the requirements of N.D.C.C. ch. 61-28 and the rules promulgated thereunder.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Permit Required for Discharges

6. North Dakota Century Code § 61-28-06(3) makes it unlawful for a person to discharge any wastes, except as in compliance with N.D.C.C. ch. 61-28 and the rules implementing that chapter.
7. North Dakota Administrative Code § 33-16-01-02 provides that a person must file a national pollutant discharge elimination system (NPDES) application before discharging "any waste through a point source into a surface water."

B. Pollution and Degradation of Water Quality Prohibited

8. North Dakota Century Code § 61-28-06(1)(a) makes it unlawful for a person "[t]o cause pollution of any waters of the state, or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state."
9. North Dakota Century Code § 61-28-06(1)(b) makes it unlawful for a person "[t]o discharge any wastes into any waters of the state, or to otherwise cause pollution, which reduces the quality of such waters below the water quality standards established therefor by the department."
10. North Dakota Administrative Code § 33-16-02.1-11(2) makes it unlawful to discharge into the waters of the state "untreated industrial wastes or other wastes which contain substances . . . which may endanger public health or degrade the water quality of water usage."
11. North Dakota Administrative Code § 33-16-02.1-09 provides for the classification of

the state's surface water and contains the standards with which the various classifications of surface water must comply, including physical and chemical criteria. "[S]treams are classified as the class of water quality which is to be maintained in the specified stream." Appendix I, N.D. Admin. Code Ch. 33-16-02.1.

12. North Dakota Administrative Code § 33-16-02.1-08(1)'s narrative water quality standards require waters of the state to be free from: floating oil or scum attributable to industrial or other discharges in amounts that are "unsightly or deleterious"; substances attributable to industrial or other discharges that are in concentrations or combinations "toxic or harmful to humans, animals, plants, or resident aquatic biota"; and "oil or grease residue attributable to wastewater, which causes a visible film or sheen upon the waters or any discoloration of the surface of adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines or prevents classified uses of such waters."

C. Definitions

13. The term "discharge" is defined as "the addition of any waste to state waters from any point source." N.D.C.C. § 61-28-02(3).
14. The term "point source" is defined as "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure . . . from which wastes are or may be discharged." N.D.C.C. § 61-28-02(6).
15. The term "pollution" is defined as "the manmade or man-induced alteration of the physical, chemical, biological, or radiological integrity of any waters of the state." N.D.C.C. § 61-28-02(7).
16. The term "wastes" is defined as "all substances which cause or tend to cause pollution of any waters of the state" N.D.C.C. § 61-28-02(10).
17. The term "waters of the state" is defined as "all waters within the jurisdiction of this state including all streams" N.D.C.C. § 61-28-02(11).

D. Penalty

18. North Dakota Century Code § 61-28-08(4) provides that a person who violates N.D.C.C. ch. 61-28 or a "rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed five thousand dollars per day per violation."

E. Environmental Emergency Cost Recovery

19. Under N.D.C.C. § 23-31-01, the Department "may recover from the parties responsible for an environmental emergency the reasonable and necessary state costs incurred in assessment, removal, corrective action, or monitoring as a result of an environmental emergency in violation of [N.D.C.C. ch. 61-28]."
20. An "environmental emergency" is "a release into the environment of a substance requiring an immediate response to protect public health or welfare or the environment from an imminent and substantial endangerment and which is in violation of [N.D.C.C. ch. 61-28]." N.D.C.C. § 23-31-01.

III. COUNTS ONE THROUGH TEN: LITTLE BEAVER CREEK SPILL

21. The allegations in paragraphs 1 – 20 are realleged.
22. At all times relevant to this Administrative Complaint, CRI owned and operated a salt brine flowline that crosses under Little Beaver Creek in the NE1/4 of the NW1/4 of Section 18, T132N, R106W, Bowman County, North Dakota.
23. CRI discovered a leak in the flowline on January 20, 2007, which it reported to the Department on January 21, 2007.
24. Department employees went to the spill site to inspect the site and observe CRI's clean-up.
25. The leak was caused by an Integrity failure where a three-inch diameter fiberglass pipe entered a twelve-inch steel pipe passing under Little Beaver Creek in the NE1/4 of the NW1/4 of Section 18, T132N, R106W, Bowman County, North Dakota.

26. As a result of the leak, approximately 210,000 gallons of salt brine, with small quantities of crude oil and crude oil and water emulsion, was released from the salt brine flowline into Little Beaver Creek.

27. The spill caused an oily residue to form on the ice covering Little Beaver Creek for a distance of approximately 250 feet downstream from the salt brine entry point.

28. Little Beaver Creek is a water of the state within the meaning of N.D.C.C. § 61-28-02(11).

29. The leak was a "discharge" within the meaning of N.D.C.C. § 61-28-02(3).

30. The flowline is a "point source" within the meaning of N.D.C.C. § 61-28-02(6).

31. The salt brine, crude oil, and crude oil and water emulsion caused "pollution" of Little Beaver Creek within the meaning of N.D.C.C. § 61-28-02(7).

32. The salt brine, crude oil, and crude oil and water emulsion are "wastes" within the meaning of N.D.C.C. § 61-28-02(10).

COUNT ONE

33. CRI did not have a NPDES permit to discharge wastes into Little Beaver Creek and had not filed a completed permit application at the time of the discharge, as required by N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02.

34. CRI discharged wastes into Little Beaver Creek for at least one day.

35. CRI's discharge of waste into Little Beaver Creek without a NPDES permit or completed permit application violated N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02.

COUNTS TWO – NINE

36. Little Beaver Creek is designated as a Class III stream. Appendix I, N.D. Admin. Code Ch. 33-16-02.1.

37. The salt brine and other substances released into Little Beaver Creek exceeded eight of the numeric standards for Class III streams, as shown in the following chart:

Parameter Violation Chart - Little Beaver Creek				
Continental Resources Brine Release 1/2007				
Parameter	Released Concentration	ND Water Quality Standard		
		Standard	Aquatic Life Criteria	
			Acute ¹	Chronic ²
Chloride	39100 mg/L	250 mg/L		
Sulfate	826 mg/L	750 mg/L		
Ammonia	81.4 mg/L		39.16 ⁴ mg/L	15.29 ⁴ mg/L
Barium	1.28 mg/L	1.0 mg/L		
Boron	160 mg/L	0.75 mg/L		
Copper	251 µg/L		51.7 ³ µg/L	30.5 ³ µg/L
Selenium	97.1 µg/L		20.0 µg/L	5.0 µg/L
Silver	43 µg/L		41.0 ³ µg/L	
1 -	Acute Standard -- means the one-hour average concentration does not exceed the listed concentration more than once every three years.			
2 -	Chronic Standard -- means the four-day average concentration does not exceed the listed concentration more than once every three years.			
3 -	Hardness dependent criteria based on a CaCo ₃ hardness of 400 mg/L.			
4 -	Ammonia Standard is based on toxicity related to temperature and pH of the water.			

38. These eight numeric standards were each exceeded for at least six days.
39. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for chloride in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
40. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for sulfate in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).

41. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for ammonia in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
42. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for barium in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
43. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for boron in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
44. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for copper in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
45. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for selenium in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
46. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for silver in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).

COUNT TEN

47. The spill caused Little Beaver Creek's waters to exceed N.D. Admin. Code § 33-16-02.1-08(1)'s narrative water quality standards because the discharge was in

concentrations or combinations "toxic or harmful to humans, animals, plants, or resident aquatic biota" and caused "a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines."

48. The narrative water quality standards were exceeded for at least six days.

49. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's narrative water quality standards in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-08(1) and 33-16-02.1-11(2).

IV. COUNTS ELEVEN AND TWELVE: HORSE CREEK SPILL

50. The allegations in paragraphs 1 – 20 are realleged.

51. At all times relevant to this Complaint, CRI owned and operated in Township 130 North, Range 105 West, Bowman County, North Dakota, a crude oil flowline between CRI's Horse Creek Ranch 1-25 production well, located in the SW¼ of the SW¼ of Section 25, and the Rattlesnake Central Tank Battery, located in the NE¼ of the NE¼ of Section 23.

52. On or before May 1, 2008, the flowline began leaking crude oil in the NE¼ of the NE¼ of Section 26, T130N, R105W. The crude oil flowed down a short ravine, into an intermittent tributary, and then into Horse Creek.

53. Neal Bucholz, who leases the land where the spill occurred, discovered the leaking crude oil flowline on May 19, 2008, and put the Horse Creek Ranch 1-25 production well into emergency shutdown.

54. Mr. Bucholz and CRI both notified the Department of the spill on May 19, 2008.

55. Department employees went to the spill site to inspect the site and to observe CRI's clean-up.

56. The leak was caused by a defect that developed over time in the three-inch fiberglass crude oil flowline.

57. The spill caused floating crude oil to accumulate on the water surface, and it caused

sludge to accumulate on and to settle on and discolor stream banks for up to 5.8 stream miles, from the NE1/4 of Section 26, T130N, R105W, to the middle of Section 16, T130N, R105W.

58. The spill was an "environmental emergency," requiring "an immediate response to protect . . . the environment from an imminent and substantial endangerment." N.D.C.C. § 23-31-01.

59. Department's costs associated with responding to this environmental emergency are: \$6,936.61 for personnel, \$2,438.13 for fringe benefits and \$4,788.81 for travel.

60. Horse Creek is a water of the state within the meaning of N.D.C.C. § 61-28-02(11).

61. The leak was a "discharge" within the meaning of N.D.C.C. § 61-28-02(3).

62. The flowline is a "point source" within the meaning of N.D.C.C. § 61-28-02(6).

63. The crude oil caused "pollution" of Horse Creek within the meaning of N.D.C.C. § 61-28-02(7).

64. The crude oil is a "waste" within the meaning of N.D.C.C. § 61-28-02(10).

COUNT ELEVEN

65. CRI did not have a NPDES permit to discharge wastes into Horse Creek and had not filed a complete permit application at the time of the discharge, as required by N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02.

66. CRI discharged wastes into Horse Creek for at least eleven days.

67. CRI's discharge of waste into Horse Creek without a NPDES permit or completed permit application violated N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02.

COUNT TWELVE

68. The spill caused Horse Creek's waters to exceed N.D. Admin. Code § 33-16-02.1-08(1)'s narrative water quality standards because Horse Creek had floating oil or scum attributable to industrial or other discharges in amounts that are "unsightly or deleterious," the discharge was in concentrations or combinations "toxic or harmful

- to humans, animals, plants, or resident aquatic biota," and the discharge caused "sludge or emulsion" to be deposited on and discoloration of the adjoining shoreline.
69. Crude oil from the spill caused Horse Creek's water to exceed the narrative water quality standards until at least June 26, 2008.
70. CRI's discharge of waste into Horse Creek caused pollution of the state's waters and caused the state's waters to exceed the Department's narrative water quality standards in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-08(1) and 33-16-02.1-11(2).

WHEREFORE, the Department requests an order

1. Imposing a civil penalty of \$5,000 on CRI for CRI's discharge of waste into Little Beaver Creek without a NPDES permit or completed permit application in violation of N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02 (Count One).
2. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for chloride in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Two).
3. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for sulfate in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Three).
4. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for ammonia in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-

11(2) (Count Four).

5. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for barium in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Five).
6. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for boron in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Six).
7. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for copper in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Seven).
8. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for selenium in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Eight).
9. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for silver in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Nine).
10. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's

waters to exceed the narrative water quality standards in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-08(1) and 33-16-02.1-11(2) (Count Ten).

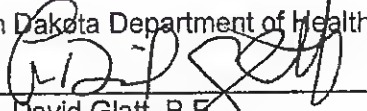
11. Imposing a civil penalty of \$55,000 on CRI for CRI's for CRI's discharge of waste into Horse Creek without a NPDES permit or completed permit application in violation of N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02 (Count Eleven).

12. Imposing a civil penalty of \$98,500 on CRI for causing Horse Creek's waters to exceed the narrative water quality standards in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-08(1) and 33-16-02.1-11(2) (Count Twelve);

13. Requiring CRI to pay the Department's costs of \$14,163.55 incurred in the assessment and monitoring of the Horse Creek spill under N.D.C.C. § 23-31-01; and

14. For such other and further relief as appropriate.

Dated this 16 day of June, 2009.

North Dakota Department of Health
By: 
L. David Glatt, P.E.
Environmental Chief

STATE OF NORTH DAKOTA
NORTH DAKOTA DEPARTMENT OF HEALTH

IN THE MATTER OF:)

Continental Resources, Inc.)
PO Box 1032)
302 North Independence Street)
Enid, OK 73702)

AFFIDAVIT OF SERVICE
BY CERTIFIED MAIL

Case No. 09-002 WPC

STATE OF NORTH DAKOTA)
COUNTY OF BURLEIGH) ss.

Donna J. Connor states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

2. I am of legal age and on the 17th day of June, 2009, I served the following **COMPLAINT**, upon Continental Resources, Inc., through its registered agent, CT Corporation System, through its registered agent, Jonathan Sanstead, by placing a true and correct copy thereof in an envelope addressed as follows:

Jonathan Sanstead
Registered Agent
314 East Thayer Ave.
PO Box 400
Bismarck, ND 58502-0400

and depositing the same, with postage prepaid, certified mail, restricted delivery, return receipt requested, in the United States mail at Bismarck, North Dakota.


Donna J. Connor

Subscribed and sworn to before me
this 17th day of June, 2009.


Notary Public

JOLENE J. THIEL
Notary Public
State of North Dakota
My Commission Expires April 5, 2011